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SERVICE DATE - SEPTEMBER 10, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34087

TRINIDAD RAILWAY, INC.—LEASE AND OPERATION EXEMPTION—  
KERN VALLEY RAILROAD COMPANY

Decided: September 7, 2001

On September 4, 2001, Trinidad Railway, Inc. (Trinidad), currently a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to lease and operate, pursuant to an agreement with Kern Valley Railroad Company (Kern Valley), an approximately 28-mile line of railroad extending from milepost 2.0 at Jansen (west of Trinidad) to the end of the line at the former New Elk Mine at milepost 30.0 (east of Stonewall), in Las Animas County, CO. Under 49 CFR 1150.32(b), the exemption becomes effective on September 11, 2001, 7 days after the notice was filed. Rail Ventures, Inc. (Rail Ventures or offeror), on September 5, 2001, filed a petition for a stay of the exemption. Kern Valley filed a reply in opposition to the petition for stay on September 7, 2001.

The line that is the subject of this notice of exemption is the same line that is the subject of pending proceedings in Trinidad Railway, Inc.—Abandonment Exemption—In Las Animas County, CO, STB Docket No. AB-573X, and Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc., STB Finance Docket No. 33956. In decisions served in those proceedings, Trinidad (the proposed lessee here) has been granted an exemption to abandon the line, Kern Valley (the proposed lessor here) has acquired the line subject to the conditions placed on the abandonment exemption, and Rail Ventures has filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 to acquire the line from Kern Valley.<sup>1</sup>

In a decision served on August 13, 2001, in those proceedings, the Board disposed of various challenges to the propriety of Kern Valley's acquisition and of Rail Ventures' OFA. In essence, the Board affirmed prior decisions approving Kern Valley's purchase and finding Rail Ventures to be a financially responsible entity. The Board also set a date by which Kern Valley or Rail Ventures could request the Board to establish the terms and conditions for purchase of the

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<sup>1</sup> Also, the Rails to Trails Conservancy (RTC) has requested issuance of a notice of interim trail use (NITU) for the line. However, because an OFA takes priority over a request for a NITU, the latter is being held in abeyance pending the outcome of the OFA process.

line if the two parties were unable to agree on a purchase price.<sup>2</sup> On September 4, 2001, RTC filed a petition for reconsideration of that decision.

Concurrently with the filing of the new notice of exemption, by a letter filed August 31, 2001, Kern Valley has requested leave to withdraw the abandonment exemption request. Rail Ventures has notified the Board that it intends to oppose the withdrawal request.

In order to permit full consideration and proper resolution of the various issues raised in this and the related proceedings, the effective date of the lease and operation exemption will be stayed pending resolution of these issues and further Board action.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effectiveness of the notice of exemption filed September 4, 2001, is stayed pending resolution of various issues raised in this and related proceedings and further Board action.

2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary

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<sup>2</sup> Rail Ventures subsequently filed petitions requesting the Board to compel Kern Valley to disclose the price it paid for the line and to permit offeror to inspect the line. Rail Ventures also asked the Board to extend the date by which it must request the Board to establish the terms and conditions for an OFA purchase. Those petitions will be addressed in a separate decision.